

United States District Court, Northern District of Illinois

(9)

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 CR 497 - 1	DATE	3/26/2002
CASE TITLE	United States of America vs. Paul A. Kelly		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Memorandum Opinion and Order

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion and Order. Defendant's motion respecting sections 960 and 963 are unconstitutional expressions of legislative authority is denied.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials WAH	U.S. DISTRICT COURT CLERK 02 MAR 27 AM 8:39 Date/time received in central Clerk's Office	number of notices	Document Number 138
			MAR 28 2002	
			date docketed	
			docketing deputy initials	
			date mailed notice	
		mailing deputy initials		

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
MAR 28 2002

UNITED STATES OF AMERICA,

Plaintiff,

v.


PAUL A. KELLY,

Defendant.

Case No. 99 CR 497

MEMORANDUM AND ORDER

Defendant contends that 21 U.S.C. §960 is unconstitutional because Congress intended the amounts of drugs to be a sentencing, rather than an elements, factor, and that cannot constitutionally stand in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). But defendant has pled guilty and has thereby waived any attacks on the statute. Even if he had not waived any attack, his contention would fail. Although his position had support from a majority of a panel in United States v. Buckland, 259 F.3d 1157 (9th Cir. 2001) (dealing with a parallel statute, 21 U.S.C. §841) the Ninth Circuit en banc reached a contrary conclusion in United States v. Buckland, 277 F.3d 1173 (9th Cir. 2002). More to the point, the Seventh Circuit rejected defendant's argument in United States v. Brough, 243 F.3d 1078 (7th Cir. 2001), and this court is bound by that decision.


JAMES B. MORAN
Senior Judge, U. S. District Court

March 26, 2002.